

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
OCTOBER 12, 2004

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI
VICTORIA SELVA

ABSENT: DAWN SLOSSON

ALSO PRESENT: JACK DAILEY, PLANNING CONSULTANT
COLLEEN O'CONNOR, TOWNSHIP ATTORNEY
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:08 P.M.

1. Roll Call.

Chairman FLORENCE called the Roll Call. Member SLOSSON absent.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property notices were notified by mail

MOTION by GALLAGHER seconded by POPOVSKI to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by POPOVSKI seconded by SELVA to approve the meeting minutes of September 15, 2004 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
5. Romeo Plank Investors Permanent Parcel No. 08-17-402-005 08-17-477-001	Section 10.0504(A) and (B) Chapter 17 Land Division Ordinance

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;

Permission to vary section:

The petitioner has failed to indicate on the application the section numbers which are being requested for a variance. Mr. Bob Beckett, the Building Official, indicates that sections 10.0504A and 10.0504B are the portions of the Zoning Ordinance involved. The application submitted by the petitioner does, however, indicate that they are appealing the administrative decision on our split/combination for parcels 08-17-402-005 and 08-17-477-001. It is unclear as to what is actually being sought as a variance. The Consultant is making an assumption that the petitioner is also requesting permission to vary a portion of the Land Division Ordinance. However, the section number of the Land Division Ordinance is not provided on the petitioner's application.

Located on East side of Romeo Plank North of 23 Mile Road and on the North side of 23 Mile Road, East of Romeo Plank Road; Section 17; Romeo Plank Investors, Inc., Petitioner. Permanent Parcel Nos. 08-17-402-005 & 08-17-477-001.

Chairman FLORENCE read the findings and recommendations of October 7, 2004. They are as follows:

No plans were submitted with the application indicating proposed development for the property. Without such plans the Township is unable to determine zoning or development compliance for the ultimate use of the property on either side of the river.

The petitioner is apparently requesting that a parcel of land fronting on 23 Mile be combined with the east portion of a parcel fronting on Romeo Plank. The river splits the parcel fronting on Romeo Plank with the west portion of the property currently being utilized for the Wade Nursery. The east portion is vacant. The Wade Nursery is a non-conforming use developed many years ago. The Wade Nursery does not meet the current standards for land development. The property is zoned R-1-S, which does not permit a nursery type use (Open Air Business). The Wade Nursery in its present state provides no paving for parking, has a full width driveway on Romeo Plank, has no sidewalks, has no walls or greenbelts where it abuts residential uses, has no by-pass or deceleration lanes as approved by the Township

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Engineer and may not meet all other applicable fire and safety codes.

The Zoning Ordinance requires a C-2 zone, for an "Open Air Business Use". The Zoning Ordinance further requires regulated curb cuts, sidewalks, walls and or greenbelts where the property abuts residential, paved parking areas, by-pass and deceleration lanes and compliance with all fire and safety codes.

It is also noted that the Land Division Ordinance indicates that the procedure for dividing, partitioning, or splitting of land indicates,

"if there is compliance with this article and all other applicable Township Ordinances, codes, provisions, standards, rules and regulations, which regulate and control the division and/or development of land, the assessor shall approve the division, partition or split and forward to the County Land File Department for assignment of the new parcel identification number (s) and verification of the legal description (s)".

In this case the split combo request could be approved if the Wade Nursery property would be brought up to Macomb Township standards; i.e., Zoning Ordinance, Road Development Improvement and Engineering Design and Construction Standards and fire codes.

If a variance (s) are granted from provisions of the Land Division Ordinance the Township would not know what impact, if any, would be created on the Wade Nursery parcel, nor if it would comply with the Zoning Ordinance as recently amended should it be split off and removed from the total parcel as it now exists. It is therefore necessary that a commitment be made by Wade Nursery that its business would comply with the Zoning Ordinance for Open Air Business Uses, development standards of the Township and the standards of the Land Division Regulations. It appears that only the east side of the river is addressed. Total plans are necessary to give the Township assurances that both sides of the river will meet the zoning and planning provisions of the Township.

RECOMMENDATION:

It is recommended that the variance requests for both the Zoning Ordinance and Land Division Ordinance be denied for the following reasons:

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the owners from using the property. Other new parcels created for nurseries and structures planned in Macomb Township will be required to comply with the same zoning and development requirements as the Wade Nursery which is evidence that the proper standards would not be unnecessarily burdensome.

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2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the development of nurseries in Macomb Township. The other owners are or will be required to comply with all the standard requirements. As a result the other property owners do not have the opportunity to make use of improperly zoned land or be relieved from the requirement of complying with Township development standards.
3. There is nothing unusual about the parcel in question that sets it apart from other parcels in the area or in Macomb Township. There is nothing to prevent any part of the property from being developed in accordance with the standards of Macomb Township. For example, there are no significant grade differences or natural features such as a stream on the west portion of the property fronting on Romeo Plank or wetland to prevent full use of the west portion of the parcel according to the ordinance as written.

The Township would support development of the property should it meet the goals and objectives of the Master Plan as it is assumed it the intention of the petitioner. It is recognized that the current proposal for the petitioner to develop the east side of the river. However, the application indicates little or no efforts that address the west side of the river, i.e. the Wade Nursery. The Township would also support the development of the Wade Nursery if it complies with the zoning and development standards of the codes and ordinances of Macomb Township.

A letter of support from the petitioner was received under letter head from Mary Ann Lamkin, AICP, PCP dated September 17, 2004 and received by the township September 23, 2004 which can be found in the file.

Peter DiNoto, petitioner was in attendance.

Mary Ann Lamkin, representative, stated there may have been some confusion on behalf of Macomb Township as to what my client is looking to do. He is simply looking to do one thing that is prescribed within the Zoning Act (statue) that governs the ability to perform land use activity. She then drew attention to the sections that are relevant to the discussion that she will present next. This body, the Planning Consultant and the Township Assessor continue to refer to this action as a variance. There is no variance here. We don't have to ask for a variance because this is not a variance situation. What we are saying is under the statue Section 125.291 the Board of Appeals-appeals is the statutory duty that you have to hear to appeals when an applicant feels that the decision rendered by that particular administrative official is incorrect. So beyond all your duties and responsibilities that this body has is which are including variances and interpreting the text and the map. You also have the power and authority to hear appeals. That what this is. We are appealing a decision that was made by the administer of your Assessor office. The issues that were raised in the initial letter that was read this evening as it relates to variances and all those requirements

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thereto that reference what's required in order to meet and qualify for a practical difficulty are not relevant. We are not searching for a variance, we are looking for an appeal. So since I had to bring this up, what I would like to ask this body is do you understand that is a duty that you have within the statute. We have a problem right of the bat if there's come confusion in terms of what were attempting to do and what it is that you think you have the power and authority to do.

Chairman FLORENCE asked Jack Dailey to respond to that particular question.

Jack Dailey stated the applicant has an obligation to indicate in the application exactly what they intend to appeal.

Mary Ann Lamkin stated that they did that. We put that in the application and I clearly had my client list and check under the other portion of your application process and I'll draw your attention to the packets that I forwarded to you, page 7 of the Zoning Board of Appeals the very last requirement or request is called other. We stipulated at that point that this was going to be an appeal from an administrative decision. That would have been your Assessor. As I initially read to you underneath the Township Rural Zoning Act that MCL number that is exactly what that portion of the Township Rural Zoning Act deals with, is the appellate process that this body is responsible for in terms of their power and authority. So we already have a problem if there's some confusion as to what it is we are requesting. This is an appeal not a variance.

Lady from the audience burst out what is that your appealing. We don't even understand what your talking about.

Chairman FLORENCE stated that we will get to the public portion in just a minute. Let them present their case and then we will get to the public portion as everyone can speak to it as they wish.

Colleen O'Connor, Township Attorney, stated that you may think that its an appeal from an administrative decision. But, my office, under Larry Dloksi, has made a determination that it is a variance that you have requested. You've asked for a variance (Mary Ann Lamkin butts in and says its not variance). Colleen asked that she be allowed to finish. You have asked for a variance, you can call it whatever you want to call it, but what you've done in your action is asked for a variance from the Land Division Act. (Mary Ann Lamkin tries to interrupt) You can call it whatever you want, but my office has determined that what you are doing in your action is requesting a variance from the Land Division Act. The Planners have said, and my office has said that. You may make you argument however you like. But what this Board is going to consider tonight is a variance. (Mary Ann Lamkin tries to interrupt). What this Board is going to consider tonight is a variance from the Land Division Act. Okay. Whatever you want to call it, is whatever you want to call it. But, that is what this Board is going to consider tonight. You are asking this body to consider

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something that is going to be outside the Land Division Act, and that is considered a variance. Pursuant to what we interpret the law to be, an attorney to interpret the law to be. So you can proceed further from that. I am also going to ask Jack to comment on that before I'm finished and then you can respond. I just want to make sure your clear that's what were doing here tonight. Jack, I would like for you to expound on that just a little bit.

Mary Ann Lamkin asked who Jack was for the record.

Colleen O'Connor introduced Jack Dailey as one of the planners. The Community Planners for the Township are Jack Dailey and Jerry Schmeiser. They are the ones that made the recommendation that Mr. Florence just read from.

Donald Wade asked if he could interject something.

Colleen O'Connor stated that this was not the public portion right now, and that he would have an opportunity to speak at the public portion time, okay.

Jack Dailey, stated that they have recommended to them in the report, that the section of the Land Division Ordinance that applies to the fact that no split/division, combination shall be granted unless all of the resulting parcels are in compliance with all land developmental ordinance of the Township. And the Zoning Ordinance is one of those, and the issue on point here of most concern is the property to the west of the river, commonly known as Wade Nursery. That portion of the property in question, as stated in the report would not comply with the current Township Zoning Ordinance since that use is categorized as an "open air business" use and would require a C-2 zone, thus the use is a non-conforming use and could be brought into compliance with a rezoning application or some other mechanism.

Mary Ann Lamkin asked if the Board was ready for her next comments. She asked Colleen O'Connor is she was counsel for the Township.

Colleen O'Connor stated that her office "Seibert and Dloski" and I work with Larry Dloski, and we are of counsel for this.

Mary Ann Lamkin asked for the record who she was speaking to.

Colleen responded back with her name. She further indicated that she attends all the Zoning Board of Appeal meetings.

Mary Ann Lamkin once again stipulated for the record they are not asking for a variance. I am clearly saying to you for the record, that what we are asking for as it relates to the statue is MCL 125.291 Board of Appeal appeals. She then proceed to read it into the record the verbage of Section 21. Now, what I'm saying to you very clearly, we are asking for an appeal on the decision that was rendered by an administrative officer of Macomb Township,

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which is Phyllis Sharbo. We are appealing her decision to deny. Based on the state statute we have a legal right to come here and say to the Zoning Board Appeals, of the three powers and authorities that you have and are derived from this statute is 1) the granting of a variance, which we are not looking for that, 2) the interpretation of either the map or text, we are not looking for that either and 3) the appeals from a decision made by an administrator that uses or defers to the Zoning Ordinance. We are asking for an appeal, not a variance. So what I would like to do since we are in some sort of quandary here in terms of whether or not we were asking for an appeal or variance in your mind. In my mind I'm extremely clear in terms of what it is I'm doing. And let me add this to the record, and maybe this might help you understand why I'm being adamant. She stated there is currently a body called The Planning Law Committee of the Michigan Society of Planning that is re-writing all of the zoning ordinances in the State of Michigan. That would be the Township Zoning Ordinance, the County Zoning Ordinance and the City and Village Zoning Ordinances. And moi, here, yours truly here, is re-writing the portions that we are talking about tonight, okay. So if there's anyone who's intimately with great understanding of what this statute means and how it is to be used, I would think, then that I would have a little bit of an understanding of what it is I'm directing my client to ask for in terms of relief of this body. So I'm going to proceed with the understanding that we have prepared an appeals case this evening. You can labor under the misconception in my opinion that we are asking for a variance. That's your legal right to do that. But it's my right, representing my client, to make a record for the Circuit Court of exactly what it is that we are intending to do this evening. And we are intending to appeal a decision of an administrative officer.

Now, if you want to ignore everything that I have put on the record tonight, that is your purgative. The next step for us, and we'll put this on the record to, is that beyond the decision made by this body, we have to create a record, produce evidence, because it will not go De Novo to Circuit Court, but it will go based upon this record that I'm going to create here tonight to the Circuit Court. So I would appreciate it if you would respect the fact that this is my client and he has applied for and stipulated to in your application that is an appeal not a variance. We did not write anything in there of any acknowledgment of a variance. So we are going to proceed with that understanding. At the end if you want to give no light to whatever it is I have said here tonight, again your purgative, we move to Circuit Court. But I'm going to establish the record that this is an appeal from an administrative decision, okay. Is everybody happy?

Colleen O'Connor stated that she wanted to make sure that you're absolutely clear that you can proceed on whatever schematics that you like to proceed on (Mary Ann Lamkin tries to interrupt) Colleen stated that she would like it if she would not interrupt her. This board is going to proceed on the recommendation and the documents that they received for tonight meeting. So you've made a record, now I'm making a record. The board is proceeding on a variance request, so we're going to proceed from there, and you can continue whenever Mr. Florence tells you that you can.

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Mary Ann Lamkin stated fine. I will so stipulate that you are not in agreement with what we are doing this evening. I'm not dealing with semantics, cause I quoted right out of the statute. So there's no semantical problem here.

Chairman FLORENCE asked Mary Ann Lamkin to continue with her presentation for this evening.

Mary Ann Lamkin stated that since this was an evidentiary hearing, your quasi judicial, I have a right to produce evidence that supports my argument in terms of this appeal. So a couple things I like to get on the record here is number 1) who these people are. She asked Ms Selva if she was the Clerk. Ms Selva responded she was not. Mary Ann Lamkin stated she needed to know because I know that there are liaisons on this board. You usually have a liaison member from the Planning Commission, you usually have a liaison member from the Township Board and so what I would like to know is if those liaison people are here sitting at this board tonight.

Member Gallagher stated he was the liaison for the Planning Commission.

She then asked if this board has ever reviewed an appeal. An appeals from the section I read earlier. I'm going to assume no, because were arguing. This is evidence that I'm entitled to get on the record. So I would like for you to answer has this board ever reviewed a request for an appeals on administrative decision.

Member GALLAGHER stated sure we have.

Mary Ann Lamkin stated so you fully understand that there is an appellate process here that the ZBA deals with.

Member GALLAGHER stated that as far as I'm concerned what you have outlined here tonight has made this meeting a whole lot simpler.

Mary Ann Lamkin stated she was not sure what that meant.

Member GALLAGHER stated when she was done he would explain it.

Mary Ann Lamkin stated the next question was extremely important, how many member of this board has ever reviewed, been in contact with, had any dealings with training, experience, education as it relates to the Land Division Act. Anybody? Am I'm going to assume that that means no because you haven't or am I just being ignored.

Member GALLAGHER stated they took the course in Citizen Planning.

Mary Ann Lamkin stated that she drafted that by the way. For the record I help draft that

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Citizen Planner Program for MSP, so I understand what basis of knowledge that you have that is rudimentary understanding of ZBA. (Member GALLAGHER tries to speak, but is cut off) But I would like to point out that in Citizen Planner they point out there is an appellate process that is your power and responsibility.

Next, the reason why I asked the question about LDA, is because this whole case, this appeal and the decision that came down through you Assessor, is built on the premise of understanding the Land Division Act. What we are going to do this evening is point out that Macomb Township does not understand the Land Division Act, okay. Now, the first thing that I want to point out again so that, I'm not going to quibble and were not going to deal with schematics or be accused of dealing with schematics and I alluded earlier to what my background is, let me tell you about my background. I helped draft LDA. I worked with Senator Stilles office with Senate Bill 112, which it became 591 of 1996 later entitled the Land Division Act. She also mentioned she worked on its predecessor amendment, Amendment 87 of 1997. She then reviewed without a question of what she knows and understands, and how that act came into play, and the difficulty that the act produced for local governments. She then reviewed the review process of Senate Bill 112 and how it had been gutted. She also reviewed why Senate Bill 112 came into play and then reviewed those two reasons.

Member GALLAGHER stated we were here to hear why Phyllis Sharbo turned down your request. Why are we getting all this other information?

Mary Ann Lamkin stated that it was a healthy introduction for you to understand when I present my evidence, for you to understand that I'm not just creating this, and I'm not dealing with a schematical issue. But there is a practical application for why it is that were arguing that this request was and is in compliance.

Member GALLAGHER stated much more of this and I'll be asleep.

Mary Ann Lamkin stated she was sorry, but you should have brought your blanket.

Mary Ann Lamkin wanted to go on the record that were dealing with this ruling decision. She then read the denial quotes from Phyllis Sharbo's letter sent to her client. She stated the summer taxes had been paid and her second reason is mute.

The next thing she had to talk about before her presentation was an extremely important part of the function of this body and it goes back to what we were talking about earlier with the appeal and that having the power. And the quasi judicial nature of what it is you all do. If you would except this fact, the quainess of your responsibility comes from this understanding. You are not constitutionally given power. No where in the state is there a constitutional issue that deals with land use and the ability to do things within the parameters of land use control. It's not in the constitution. It legislated. Hence, the word police power.

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The quasi comes into play for this reason. Your responsibilities as a judicial body inside the zoning act comes from a legislative piece of legislation. It is not constitutionally driven.

My presentation given tonight will prove tonight that the Township Assessor does not understand the Land Division Act.

She presented a color coded drawing of the land seeking to split/combined to the Board for a visual effect.

She further indicated she was going to build her case around two very important sections of the Land Division Act. The Land Division Act deals with exempt splits, which were asking for, they fall below the Plat Act, they also fall below the requirements of Section 108 which deals with 10 acre parcels and there automatic four split option without having to split. This is a parcel that is greatly less than that requirement that is found in 108. So were going to be looking at this one section as it relate to the request that we have asked for from the Assessor. That section is 1091, 1091b, c, d 1095 and 1095(6). The other issue that was eluded in the denial citation by the Assessor, was, that she, seems to think that non-conformity is a relevant issue inside the Land Division Act. Its not in there. The second thing she brought to attention was the section that she cites in terms of her denial for our split is Section 17-163(g). She noted that she was going to demonstrate tonight that it was an incredible abuse of power and arbitrary capricious activity on the part of Macomb Township. She said she was going to show through the evidence in the statue that Section 17-163(g) is not applicable anywhere or at anytime in terms of being able to approve or disapprove a split request. Its not there in the statue. The last thing she wanted to put on the record was and she asked if the members had there Zoning Ordinance with them, because that is going to be basically the legal document from which your going to review our request. She asked them to look up Article 5, Section 10.0502. The Assessor has pointed out that we are in violation because there is a non-conformity on the property. If your ordinance reads like the ordinance we bought from the township, the property is in compliance. The document she held was the Township Zoning Ordinance, in it, it shows when she reads that section of the Zoning Ordinance, under Chapter 5, nurseries are in compliance. Because nobody took this legal document and changed the information who detrimentally relies on the information herein would be given the correct information. You can imagine our surprise, when were reading this ordinance, we purchased this ordinance, we pay for this legal document only to discover that right now, your ordinance does not show that you have removed nurseries as a permitted use and have made it non-conforming. So this legal document is not even legal, its misleading in terms of its legal content. Because even though in May 2003 there was an amendment by the Planning Commission and adopted by the Township Board to remove nurseries as a permitted use from AG, hence the statement here that says all use permitted in this district would be considered permitted uses. Nobody bothered to take and correct this legal document. So everyone who detrimentally relies on this, as the legal document that this Township is literally suggesting this is what we are saying is out there and we are going to enforce, is wrong. So, Mr. Wade

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and Mr. DiNoto, who relied on this information was mislead, because this legal document is incorrect, and I needed to put that on the record.

Mary Ann Lamkin presented several visual boards and handouts at this time during her presentation of the appeal to the administrative decision. None of the boards were handed over as exhibits from which we read and quoted several different sections of the Land Division Act. She also noted the three sections that the Township Assessor should have dealt with in this review, which were Sections 1091(b) (c) and (d), those standards, that's it no more.

She reviewed the and explained the statues as

Chairman FLORENCE stated he appreciated her explanations. But asked her to focus on specifically what was being requested tonight. He again stated he appreciated all the background but asked to continue to focus on the finalization.

Mary Ann Lamkin stated that this was not just for the benefit of the Board, it is also the possibility of the benefit that we would have to pursue going to Circuit Court. (Chairman FLORENCE stated that he understood) She stated she was creating a record that Circuit Court could fully appreciate should this board chooses to ignore everything.

Colleen O'Connor asked if Mary Ann Lamkin was an attorney.

Mary Ann Lamkin stated no and that she did not have to be.

Colleen O'Connor stated she wanted to remind her and say for the record that what the Circuit Court is going review is the record that we create. That is what Beckie is doing over there. She is taking minutes. (Mary Ann Lamkin interrupted and stated that they have a court stenographer) (Colleen stated she knew what a stenographer was) Beckie is going to be doing the minutes here and what Beckie will be focusing on in the minutes is what the relevant topics are tonight. (Mary Ann Lamkin tries to interrupt again) Colleen stated she would appreciate it if she would not interrupt her as she was speaking. The purpose of this meeting is to listen to what your appeal is. Every member of this Board is well versed in the Land Division Act and in the statues. What Mr. Florence is trying to say here is if you could just stick to the topic at hand it would be a much more appropriate presentation.

Mary Ann Lamkin, stated she had a problem with what Colleen just stated. First of all she was not the Chairperson, your merely legal counsel. To admonish me and tell me that I need stay within some kind of perfunctory limit because that's your record, I'm saying to you I'm creating our record. So I would like our record to reflect that you don't have a right to tell me what I can put on the record and what I can't put on the record. I'm building a case for my client so that in a review at the Circuit Court level they can clearly understand that we presented a case that had no problem in terms of rational logic being applied here.

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So, for you to suggest, that you can limit me, because you have a problem with time is irrelevant.

Colleen O'Connor asked her to hold off for a minute. (Mary Ann Lamkin tries to interrupt by asking if she was the Chairperson).

Chairman FLORENCE stated the Colleen O'Connor has approval to speak.

Colleen O'Connor stated that she has been asked to come to this meeting each and every time there is a Zoning Board of Appeals meeting, because she is the legal counsel for the firm, okay. She indicated she had done a lot of these appeals at Circuit Court and I'm not limiting you because of time, nor is the Chair limiting you because of time. What I'm going to tell you, as an attorney, is that the judge is going to look at the issues presented before this Board. A judge does not need to be educated about the Land Division Act, that's what briefs are for. So, if you think that because your making this voluminous record and that is what the judge is going to read and make his decision on, what Mr. Florence is trying to tell you is that there going to make a record based on what the issues are.

Mary Ann Lamkin stated exactly and they agreed. But I'm creating the record as I see it necessary. For you information I didn't see but one person at this Board table tell me that they had any sterling understanding of LDA. Hence, the reason why I am deliberately being a little bit more fore boost then I normally would. So I think you errored in speaking on behalf of the rest of the members of this body, because they did not clearly tell me they have a working knowledge (Colleen O'Connor stated she was not going to argue with her anymore) She stated she was making a record as she feels as representing her client is important for us to make our point, and if takes me as long as it takes me that's what we paid this application fee for. That's due process. Last time I looked that's protected under the constitution. Could be wrong there because I'm not an attorney. But, nevertheless, if you allow me to just simply go on, we probably move this thing on a lot faster.

Chairman FLORENCE asked if Colleen O'Connor could reply to that please.

Colleen O'Connor stated she was not going to argue with her or had not interest in arguing with her. Did not care if she was an attorney or not. That's not the point of what I'm saying and I'm not telling you that your limited because of time. The Chairman has brought up the point that your going beyond the scope of this appeal. (Mary Ann Lamkin stated based on his opinion)

Mary Ann Lamkin stated it was her opinion, Madame, that I am representing my client in the best interest that he needs should he fail here. I can't deal with what your feelings are in terms of relevancy, because as far as I'm concerned this Township created the problem, we did not. We are merely trying to make sure the relevant issues get to the record. (Colleen O'Connor tries to speak but was not allowed by Mary Ann Lamkin)

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Chairman FLORNECE stated that he appreciated the understanding that she was trying to bring forth to the Board and he appreciated everything that they were trying to go through. However, he asked that she try to continue the process as quickly as she possible could. It had nothing to with time, it has to do with moving the meeting forward. He asked if she would do that.

Mary Ann Lamkin stated she was going as fast as she could, but every time your Legal Counsel injects (Chairman FLORENCE asked her to continue) Mary Ann Lamkin continued on (Chairman FLORENCE asked her to continue, continue PLEASE)

Mary Ann Lamkin reviewed the application process and why it was not correct. (Members of the Board spoke to each other) She asked if she was losing everyone attention here or what or if this was a rude way of treating everyone. Chairman FLORENCE told her to proceed. She noted the Township has three very different sets of submittal requirement for review. She then reviewed those three in detail. (The visual Board were presented at this time from which she read from, but were not submitted for the record) She gave an example of a person coming to the front counter asking for a split, stated the Assessor knows her and their friends, and she gets her approval. Does not look at the section from which the denial may be given from. No relevance, no reason. Pete DiNoto comes in, he applies and she hits him with I'm going to deny you under this great big huge catch of everything including the kitchen sink, not one of them explain how it relates to LDA.

Chairman FLORENCE stated he was going to stop her right here. He explained the reason he was going to do that was because what you're saying here with respect to this section, the Assessor in Macomb Township, has the right to set the standards for the Township for assigning these types of splits. I no not think that that it's appropriate for you to suggest that she is misstepping her authority.

Member SELVA stated she was citing the Land Division Act, which you by admission have helped to write, and this is a section which is in the Land Division Act that was used. Now if you don't agree with that particular section of the Land Division Act, then you have an argument with the state legislation.

Mary Ann Lamkin stated that Chapter 17 was the Township Land Division Ordinance. Not there. She continued under her rational of an application being submitted and using the denial statement of Chapter 17 possible catch all statement.

Chairman FLORENCE stated thank you, but that the same standards are applied to every single parcel in this Township. Nothing has changed (Mary Ann Lamkin tries to interrupt) from anybody that approaches that Assessor asking for a split. The same standard is applied across the board. (Mary Ann Lamkin interrupts with saying we don't that)

Chairman FLORENCE stated the same standard is applied across the board.

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Mary Ann Lamkin states that you and I don't know that for a fact. We don't know how many times she has cited this section to someone and not others. Because theoretically you can take every single code, ordinance, provisions, standard, rule and reg and come up with anything but, if she does not do it everybody it is selective enforcement. So why did she do it with Mr. DiNoto's request, because this does not clearly tell me why.

Chairman FLORENCE stated that every time somebody goes through a split request they all are asked the same questions, they are all presented with the same information, they are all presented with the same requirements they are all required to meet the same standard.

Mary Ann Lamkin stated okay, okay, alright, she would go with that. Then explain to me where the standards are in that. Tell me what ordinance sections specifically says anything about split division. Tell me what code that you are referring to when you say all codes. Tell me what provisions, you can't clearly tell me, this section specifically gives notice of what exactly she can and can not use as a why of denying. This is an open ended (she lost or got ahead of herself)

Chairman FLORENCE stated that all documentation, ma'am that is recorded in Macomb Township, whether it be the Zoning Ordinance whether it be Planning Commission requirements are all the same standard. They were deliberately set up over a whole series of a number of years to where they have been consistently created and consistently applied to every parcel in this township.

Mary Ann Lamkin asked again by going back on the record how do you know that. Have you read every single determination made by your Assessor.

Chairman FLORENCE stated that nobody has read every single determination.

Mary Ann Lamkin stated that's my point then. How can you sit there then and say she has applied that section routinely, equally and fairly with every split that has come by her. You don't. Because that is so open ended, that she could use anything she wants.

Chairman FLORENCE stated that all questions go through the Zoning Ordinance, the documentation for the Planning Commission requirements and every other piece of documentation that this Township puts together. And that is a consistent standard that has been set forth over the whole numbers of years and years and years and nothing has changed with any of that documentation.

Mary Ann Lamkin stated while I'm about to tell you that over the years and years and years that you've been using that particular standard, you've been in violation of every single split that she has used in that section of a means of denial, your in violation of LDA.

Chairman FLORENCE stated thank you for that opinion.

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Mary Ann Lamkin used her visual boards to read from to review the submittal requirements again. (The boards were not submitted as exhibits)

Chairman FLORENCE stated he did not pretend to understand what the Assessors job is. He is not the Assessor, okay. She has a job that she is hired by the people of Macomb Township to complete and she does her job to the best of her ability and she applies the standard to the best of her ability and there is no way that I can say to you that she does not do her job.

Mary Ann Lamkin stated that we need to try to be a little bit more open minded in the fact that it is not deliberate what she does. She's obviously working with forms and ordinance language that's not correct. I'm not at all suggesting for one moment that she is deliberately doing this. But by her own choice of whenever she chooses to, she has the right to make a decision on anything without any qualifiers. And the statue simply does not allow her to do that. Your ordinance does, but your in violation of the state statue. The Land Division Act Section 106 clearly and dramatically limits the scope of standards that the local ordinance can contain in its land division ordinance. I've given you in your packet a complete quote and I'm going to read for the record what Section 6 does. (Placed a visual board from which she read the quote from but was not given as an exhibit)

She also presented another visual board that reiterated the standards of the LDA and listed her thoughts of Macomb Township on the Land Division request. She also gave her explanation of non-conformity and conformity and property being vested and/or grandfathered. (The boards where not given as exhibits)

She also gave a verbal explanation of why non-conformity has no use on the land splits and that Section 109 deals with the splitting requirements of the Land Division Act.

Lastly, the Macomb Township Assessor stated that were unpaid taxes on the property involved in the split/combination request. The Land Division regulation section that she cites is Section 17-161(b), no where is state statue the Land Division Act, is the fact that there are unpaid taxes on the property, a standard for review for approval or disapproval of the proposed division. (The visual boards were presented and she read from them again, the boards were not given as exhibits)

Ed Dushae, attorney for representative, stated what we have is a simple matter and I can sum it up very briefly. First of all with regards to this evening preceeding the ZBA is required to consider those matters brought before it. This is an appeal from an administrative decision and therefore it is properly before the board and you may consider it. Secondly, there were two reasons for the denial; the taxes and the zoning. The taxes have been paid as we demonstrated this evening. With the zoning, the zoning is not a proper consideration under the LDA and secondly under the zoning ordinance that you have adopted, non-conformance uses may continue but may not be expanded. The purpose split

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does not expand the use, in fact it goes the other way. It decreases the use. Mr. Wades nursery is getting smaller not larger. The simple matter is this lot split should be approved under the LDA and your ordinance.

Public Portion:

William Oliver, 51077 Woodwide Drive, said he had a copy of a map that was provided for him, the Monday after the actual signage was removed from that property. The listing agent removed the sign and he asked if this property was sold. His answer was yes. He asked residential or commercial. He said it was not commercial. I was happy. Then came to this building and went the Building Department and asked about a month and a half ago what's going on. They told me the property had not been sold. He asked if he could get a copy of the zoning map, which he had a copy in front of him. He then asked how it was zoned. They said R-1-S, and he looked it up on the legend and it said Residential One Family Urban (sic). However, they also told me putting it in there writing, it was 14 ½ acres and it was all in the flood zone. My question to this board is, is this property is section 17 listed as 08-17-477-001 owned by Don and Elaine Wade, 10877 M-32 East, Johannesburg, MI 49751. This information was provided to me by the people upstairs in the Building Department (this is there handwriting). My question is, is this property in the flood zone, yes or not. That's question number one. Question number two, I've read recently in the paper that all property in a flood zone in Macomb Township can not be zoned residential. This gentleman here is attempting to purchase from what I understand property to build on. Residential R-1, and I'm questioning if its in a flood zone, how can you build on it. Please advise. Thank you very much.

Paula LaBlanc, 51311 Woodside, stated her question was she had no clue what Mr. DiNoto is trying to do. Now, are you trying to build houses, or are you trying to build a business or what?

Mr. DiNoto stated he was trying to split a piece of property and combine it to another piece of property.

Paula asked were his property was that he already owned.

Mr. DiNoto stated he was in the process of purchasing.

Paula looked at the color coded map provided by Mary Ann Lamkin to try to understand Mr. DiNoto's request.

Paula asked Mr. DiNoto asked exactly what his proposed plan was for that area. She lives there and would appreciate knowing whats back there.

Mr. DiNoto stated that tonight they were trying to get the property split so that they could

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combine it, so we can purchase it. Later on we will bring a plan in front of the Planning Commission and everybody else, all the governing bodies and everybody will get a chance to see what were trying to do here.

Paula stated that so basically it could be residential, commercial anything you want to propose to them later.

Mr. DiNoto stated the property is zoned R-1-S, its zoned residential.

Paula stated then it goes back to you guys, is it zoned residential?

Chairman FLORENCE stated the property is currently zoned Residential One Suburban.

Paula stated that's my question and answer. Thank you.

William Oliver stated he was stilling waiting for his answer. Whether or not its in a flood zone.

Chairman FLORENCE and Member SELVA stated they do not have the information in front of them this evening.

Jack Dailey stated the flood maps are available in the BGuiliding Department and anyone can come in and look at the flood map and see how it effects a particular piece of property. That does not necessarily tell you how things are going to develop because the State Department of Environmental Quality as well as the Macomb County Public Works office and the Township Engineer review all plans carefully to determine flood considerations. And it is not until a plan is presented that they can make a determination on how much or how the flood areas will affect the end result. So, I caution anyone to say go look at a map and say because it may show a flood designation of some sort-floodplain, floodway whatever, what the impact on the land is. Only a professional engineer can really give a competent answer to that question.

MOTION by POPOVSKI seconded by GALLAGHER to close the public portion.

MOTION carried.

MOTION by GALLAGHER seconded by POPOVSKI to table the variance request of Section 10.0504(A) and (B) and Chapter 17-Land Division Act in lieu of the large amount of information provided to the next regular meeting of November 9, 2004.

MOTION carried.

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6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. PLANNING CONSULTANTS COMMENTS

None.

9. MOTION TO RECEIVE AND FILE CORRESPONDENCE IN CONNECTION
WITH THIS AGENDA.

**MOTION by GALLAGHER seconded by SELVA to receive and file all
correspondence.**

MOTION carried.

ADJOURNMENT

**MOTION by GALLAGHER seconded by POPOVSKI to adjourn the meeting at 8:58
P.M.**

MOTION carried.

Respectfully,

Brian Florence, Chairman

Beckie Kavanagh, Recording Secretary